



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169143

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 16, 2015, at Superior, Wisconsin.

The issue for determination is whether the petitioner may receive medical assistance reimbursement for an MRI to assess her temporomandibular joint.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], R.N.

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Douglas County.
2. The petitioner with Dr. [REDACTED] and [REDACTED] requested an MRI to assess her TMJ on August 28, 2015. The request was denied on August 31, 2015.

3. The petitioner received the MRI on August 31, 2015
4. The petitioner is a 40-year-old woman who complained of severe pain in her right ear and posterior jaw, chronic migraines that lasted up to three days without aura, and lower back pain on her right side.
5. The petitioner's jaw had good range of motion, which was demonstrated by inserting three fingers between her upper and lower teeth. There is no deviation between her teeth.
6. The petitioner's file indicates that she saw an oral surgeon once before the MRI was requested and contains no documentation that she completed conservative treatment before receiving the MRI.

DISCUSSION

Medical assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Admin. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, MRA, and PET scans are consistent with good medical practice, the Division of Health Care Access and Accountability requires prior authorization before paying for them. *See MA Update*, #2010-92. There are several reasons for requiring prior authorization, the most important of which when evaluating imaging requests are "to safeguard against unnecessary or inappropriate care and service; to safeguard against excess payments;...and to determine if less expensive alternative care, services or supplies are usable..." Wis. Admin. Code, § DHS 107.02(3)(b)1., 2., and 4." Like any request for a medical assistance service, the requests for scans must be medically necessary. Wis. Admin. Code, § DHS 107.02(3)(e)1. A service is medically necessary if, among other things, it is "of proven medical value or usefulness" and "not duplicative with respect to other services being provided to the recipient." Wis. Admin. Code, §§ DHS 101.03(96m)(b)5 and 6.

The petitioner requested an MRI to assess her TMJ after she complained of severe pain in her right ear and posterior jaw, chronic migraines that lasted up to three days without aura, and lower back pain on her right side. The department's agent, [REDACTED], denied the request on August 31, 2015, but her provider performed the test on that date anyway.

[REDACTED] has drafted guidelines that it and the department rely upon when determining whether to approve requests for advanced electronic imaging. Those guidelines allow MRIs for TMJ only "for those who fail a minimum of 6 weeks of non-surgical treatment and who are actively being considered for TMJ surgery." *Guideline HD-30.1 Temporomandibular Joint Disease (TMJ)*. This is a reasonable requirement because it allows the department to safeguard against unnecessary or inappropriate care and services, to safeguard against excess payments, and to determine if less expensive care and services are usable. The provider's request indicates that the petitioner had only one visit with an oral surgeon before she received the MRI. Clearly, this does not constitute six weeks of non-surgical treatment. Because she has not shown that she received six weeks of non-surgical treatment, the department correctly denied her request.

I note that Dr. [REDACTED] and [REDACTED] cannot hold the petitioner responsible for the cost of this MRI unless they warned her before performing it that she would be responsible for the cost if the department denied the request:

Prior authorization of services. When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Wis. Admin. Code, § DHS 104.01(12)(c).

The petitioner testified that her providers have tried to hold her accountable for this bill. I suggest she send a copy of this decision to them. I have no authority to enforce § DHS 104.01(12)(c), but the department does. If her providers continue to try to hold her responsible for this cost after receiving a copy of this decision, I suggest she file a complaint with the Division of Health Care Access and Accountability.

CONCLUSIONS OF LAW

The department correctly denied the petitioner's request for an MRI because she did not demonstrate that it was the most cost-effective treatment for her TMJ by first completing a course of conservative treatment.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of December, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 3, 2015.

Division of Health Care Access and Accountability